Supreme Court, U.S.
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No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

v.

SAMUEL YARBER,
Respondent.

On Petition for Writ of Certiorari to the Illinois Appellate Court, Fifth Judicial District

PETITION FOR WRIT OF CERTIORARI

JAMES E. RYAN
Attorney General of Illinois

BARBARA A. PREINER
Solicitor General of Illinois

ARLEEN C. ANDERSON
Counsel of Record
Assistant Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3000

NORBERT J. GOETTEN
Director
ROBERT J. BIDERMAN
Deputy Director
CHARLES F. MANSFIELD
Staff Attorney
State's Attorneys
Appellate Prosecutor
725 South Second Street
Springfield, Illinois 62704
(217) 782-8076

Counsel for Petitioner

Of Counsel:

MICHAEL WEPSIEC
State's Attorney
Jackson County Courthouse
Murphysboro, Illinois 62966
(618) 687-7200

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Illinois Appellate Court's holding that a *Terry* stop based on corroboration of two anonymous tips was unlawful because the tips were corroborated by only "innocent minutia" and not by independent verification of the tipster's "allegations of criminal activity" (a) is contrary to the holdings of *Gates* and *White* and (b) violates the command of *Hass* that a State may not impose greater restrictions on police as a matter of federal constitutional law when this Court specifically refrains from doing so.

2. Whether the reasonable suspicion which permits the *Terry* stop of a deboarding train passenger, suspected of carrying illicit drugs based on corroboration of anonymous tips rather than on a drug-courier profile, also attaches to and permits temporary seizure of the suspect's hand-carried luggage for examination by a narcotics detecting canine.

3. Whether the Illinois Appellate Court's holding that the detention of a deboarding train passenger's luggage, suspected of containing illicit drugs, was unlawful because there was no probable cause, a narcotics detecting canine was not immediately available at the scene, and the 44-minute detention after the subject freely left the scene for his local residence was unreasonably long (a) is contrary to the holdings of *Place* and six circuits of the United States Court of Appeals and (b) violates the command of *Hass* by placing greater restrictions on police based on the federal constitution than have the Court in *Place* and other federal courts of review.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of Illinois, respectfully prays that a Writ of Certiorari be issued to review the judgment of the Illinois Appellate Court, Fifth Judicial District.

OPINION BELOW

In an order dated February 22, 1995, the Circuit Court of the First Judicial Circuit, Jackson County, Illinois, found (1) the *Terry* stop of respondent, a deboarding train passenger, was lawful because the police had sufficient independent verification of an anonymous informant's tips that respondent was transporting illicit drugs, (2) the police were required to but did not develop additional suspicions during the stop to permit seizure of respondent's hand-carried luggage for examination by a narcotics detecting canine, and (3) the police, after seizing respondent's luggage, complied with the requirements of *United States* v. *Place*. (Appendix D) Thus, based on its second finding the trial court suppressed the two pounds of marijuana found in one of respondent's bags during execution of a search warrant issued after the trained canine alerted to the bags. On review the Illinois Appellate Court, Fifth Judicial District, found (i) the *Terry* stop was unlawful because the tips were corroborated by only "innocent minutia" and not by independent verification of the tipster's "allegations of criminal activity," (ii) respondent's luggage was unlawfully seized because the *Terry* stop was unlawful, and (iii) detention of the luggage was unlawful because there was no probable cause, a narcotics detecting canine was not immediately available at the scene, and the 44-minute detention after the subject freely left the scene for his local residence was unreasonably long. *People* v. *Yarber*, 279 Ill.App.3d 519, 215 Ill.Dec. 617, 663 N.E.2d 1131 (5th Dist. 1996). (Appendix A) Thus, the Illinois Appellate Court affirmed the trial court's order, but

it did so on entirely different grounds and for precisely contrary reasons.

The Illinois Supreme Court denied the State's petition for leave to appeal on October 2, 1996. (Appendix B) The Illinois Supreme Court then denied the State's motion for reconsideration on November 6, 1996. (Appendix C)

JURISDICTION OF THE COURT

The opinion of the Illinois Appellate Court, Fifth Judicial District, was filed April 16, 1996. The Illinois Supreme Court denied petitioner's timely-filed petition for leave to appeal on October 2, 1996, and denied petitioner's motion to reconsider on November 6, 1996.

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a) because in the proceedings in the state courts of Illinois the respondent asserted alleged violations of his rights arising under the United States Constitution. This petition is filed within 90 days of the Illinois Supreme Court's denial of the State's petition for leave to appeal.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The decision of the Illinois Appellate Court at issue here has serious implications for the enforcement of State narcotic laws, places the Crime Stoppers network in grave jeopardy, imposes greater Fourth-Amendment restrictions on State law-enforcement officers than has this Court, and poses a question never specifically addressed by this Court: namely, whether the reasonable suspicion which permits the *Terry* stop of a person suspected of transporting illicit drugs based on corroboration of anonymous tips also attaches to and permits temporary seizure of the suspect's hand-carried luggage for examination by a narcotics detecting canine.

At noon, November 8, 1994, Detective Lynn Trella of the Crime Stoppers unit of the Carbondale, Illinois, Police Department received an anonymous telephone tip that a Southern Illinois University ("SIU") student, Samuel Yarber, was selling marijuana on the Carbondale Campus of SIU. (R. C125-28) According to Trella:

> The caller said Samuel Yarber was a male, black, with a close-cropped beard, heavyset, lived at 413 Wright I, SIU campus, worked at Lentz Hall, and was selling large amounts of pot out of his dorm room. He lived alone, and any time he attended parties anywhere he sold large amounts of pot also. The caller stated the caller's friends consistently bought pot from Mr. Yarber . . . .

(R. C126)

> [T]he caller said, my best friends buy pot from Mr. Yarber all the time . . . .

(R. C127-28)

The informant called again at 4:00 p.m. the same day and reported, "Samuel Yarber had left on a train to Chicago to

get more drugs and would be back the next day on the train." (R. C128, C160-61, C163)

After the second call police went into action and quickly verified that a Samuel Yarber was an SIU student, lived alone on the Carbondale campus in 413 Wright I, worked in Lentz Hall, and had not been at work for several days; they also learned he was a black male with a close-cropped beard, was six feet four inches tall, and weighed 220 to 230 pounds. (R. C157, C170-72) Special Agent Scott Miller made a Polaroid photograph of Yarber's student ID photo and about 5:30 p.m. took it to the Amtrak station in Carbondale. (R. C172-73) The ticket agent stated he was "almost positive" he had seen that person at the station around 3:30 p.m. when he asked for change, but the agent had not seen him after the northbound, 4 o'clock train to Chicago departed. (R. C173-74) The agent described the suspect as "a black male, heavyset, wearing a dark coat." (R. C174)

Because reservations were not required for the 4 o'clock train, it could not be positively determined that respondent was on it. (R. C174) Also, tickets could be purchased on the train. (R. C175) The first returning train was scheduled to arrive in about eight hours at 1:18 a.m., and required reservations; respondent's name was not on the reservation's list. (R. C175)

After leaving the train station Agent Miller telephoned the number listed for respondent's dorm room but got only an answering machine with a "black male caller voice." (R. C175-76) He made about six calls through the night and into the next day but never received an answer other than from the answering machine. (R. C176) Miller's last call was about 2:00 p.m. on November 9th. (R. C176)

That evening Officer Dee Cross and four other officers went to the Carbondale Amtrak station and met the southbound train from Chicago when it arrived at 9:15 p.m. (R.

C142-43, C176-77, C203) Respondent got off 3 to 4 minutes after it stopped. (R. C143)

Officer Cross and Sgt. Robert Ledbetter, both of whom recognized respondent from his photograph, saw him get off the train from Chicago, walk along a concrete walkway, and descend a flight of steps into the parking lot (R. C143-44, C158, C203-04) Cross, who was in uniform, approached respondent, stopped him at 9:18 p.m., said she suspected he was carrying "drugs and/or weapons," and asked, without further specification, if she could look. (R. C133-34, C138, C142, C144-46) Respondent stopped, set his bags down, stepped five to ten feet away, and said she could search him but not his bags—a maroon, gym bag and a black, plastic trash-bag. (R. C145-46, C180-81, C96, C135, C137)

Her pat-down of respondent yielded nothing remarkable; thus, Officer Cross determined at 9:36 p.m. to let him go but to keep his luggage for examination by a narcotics detecting canine. (R. C133, C146, C149) This was because she understood the purpose of respondent's trip had been "[t]o pick up a load of cannabis . . . [t]o get a load" and that he "would be coming back on the train with a load of cannabis." (R. C157-58) According to Sgt. Ledbetter, who was standing nearby, Cross told respondent she was "going to call a drug dog that was trained specifically to sniff drugs, cannabis, controlled substances, if that was okay, and he said okay." (R. C207) Respondent never objected. (R. C207-08)

As luck would have it, the city's canine, Jasper, could not come to the train station; his liability insurance for work in public places had not been verified by the city attorney. (R. C140, C147, C151, C209) Police did not learn this until about 5:30 that evening; thus, they did not ask for another dog to meet the train. (R. C217-18) However, during the stop they did seek one from the Illinois State Police; it was

not available. (R. C140-41, C209) Nor was one from the Sheriff of nearby Williamson County. (R. C140-41, C209) Thus, they decided to take respondent's luggage downtown to the city police station where Jasper could examine it without a liability-insurance concern. (R. C209, C215)

Officer Cross and Sgt. Ledbetter each told respondent they were taking his luggage to the Carbondale Police Station for examination by a narcotics detecting canine. (R. C150, C210, C212) Both also told him he could either go with them to the police station or go there later to get a receipt. (R. C150, C210-11) Ledbetter assured respondent no one would open his luggage without a search warrant. (R. C210-11) Agent Miller remembered one of the officers at the scene told respondent "that once we got down there and we had a drug dog conduct the sniff, if it did alert to the bags, we would be obtaining a search warrant and then searching the bags at the police department." (R. C184)

Both Cross and Ledbetter told respondent he was free to leave the scene, and he did at 9:36, eighteen to twenty minutes after first stepping off the train. (R. C150, C133, C138-39, C210) He walked south (R. C214) toward campus. Thus, after an 18- to 20-minute stop respondent walked freely away.

Police took respondent's luggage to the police station, secured it in the evidence room, called the canine officer, Patrolman Doug Brinkley, at 10:00 p.m., and asked him and his canine to come to the station. (R. C134, C214-15) They arrived quickly. (R. C216) Jasper alerted to the bags at 10:20 p.m., just 44 minutes after Officer Cross seized them at the train station. (R. C151, C135-36, C216)

Sgt. Ledbetter completed a complaint for search warrant for the luggage; the warrant was issued at 11:45 p.m.; and the search of the luggage began a half-hour later at 12:15 a.m. (R. C136-37, C216) The officers found, among other

items, several sheets of fabric softener and "two large packages wrapped in [S]aran wrap" in the defendant's gym bag. (R. C137-38) Each of these packages contained "a large Ziplock bag, and inside[,] each Ziplock bag contained a green leafy substance." (R. C138)

Respondent was charged with unlawful possession of cannabis (more than 500 grams) with intent to deliver. (R. C6) He moved to suppress the marijuana found in his gym bag. (R. C20) After a hearing the court granted the motion. (R. C58-60) The State appealed, and the Illinois Appellate Court affirmed. The Illinois Supreme Court denied the State's petition for appellate review.

REASONS FOR GRANTING THE WRIT

I.

THE ILLINOIS APPELLATE COURT ERRONEOUSLY IMPOSED GREATER RESTRICTIONS ON A *TERRY* STOP WHICH WAS BASED ON CORROBORATION OF TWO ANONYMOUS TIPS THAN THE *DRAPER-GATES-WHITE* LINE OF CASES ALLOWS.

Based on their corroboration of two anonymous tips, police suspected respondent was transporting cannabis and stopped him after he deboarded a train. The first issue is the constitutionality of that stop.

Carbondale City Police received an anonymous tip on their Crime Stoppers line that respondent, Samuel Yarber, a student at the Carbondale campus of Southern Illinois University ("SIU"), regularly sold large amounts of pot out of his dorm room and at parties. Four hours later the informant called again and reported respondent had just left on the 4:00 p.m. train to Chicago and would return by train the next day with more drugs. Officers confirmed much of the information given, including the likelihood respondent

had left Carbondale that afternoon on the train to Chicago. The next evening officers met the train from Chicago, saw respondent get off, and stopped him; he straightway gave consent to search his person but said they could not search his hand-carried luggage. Finding no drugs on his person and still suspecting he was transporting a load of cannabis, officers seized his two bags and took them to the police station for examination by a narcotics detecting canine. Then, just 44 minutes after respondent walked free from the scene of the stop, presumably to his dorm, the canine alerted to his bags.

Officers secured a search warrant and found 930 grams of a green leafy substance in one of the bags. Respondent was charged with unlawful possession of cannabis (more than 500 grams) with intent to deliver. (R. C6) He filed a motion to suppress the evidence, claiming he and his luggage had been seized in violation of the Fourth Amendment's prohibition on unreasonable seizures.

In a three-part ruling, which ultimately granted respondent's motion, the trial court first found the stop was lawful under *Terry* v. *Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), because the officers had "detailed corroboration of many facts contained in two separate telephone calls by an anonymous (and unknown) caller." (R. C58) The Illinois Appellate Court disagreed: it found the stop of respondent at the train station was unreasonable and, therefore, unconstitutional. *People* v. *Yarber*, 279 Ill.App.3d 519, 215 Ill.Dec. 617, 663 N.E.2d 1131, 1138 (5th Dist. 1996).

The appellate court found fault with the stop on a number of bases expressly rejected by this Court over the last several decades.

First, the appellate court complained that the anonymous informant had not indicated "she witnessed any criminal activity" and that the "tip contained only hearsay reports of

other individuals." *Yarber*, 663 N.E.2d at 1137. Nearly four decades ago this Court expeditiously rejected the same claim of error in *Draper* v. *United States*, 358 U.S. 307, 79 S.Ct. 329, 333, 3 L.Ed.2d 327 (1959). Petitioner Draper argued information given a federal narcotics agent by a known informant was hearsay and "could not legally have been considered" by him. *Draper*, 79 S.Ct. at 332. The Court found "petitioner entirely in error." *Id.* (relying on *Brinegar* v. *United States*, 338 U.S. 160, 69 S.Ct. 1302, 1309, 93 L.Ed. 1879 (1949)). Then in *Adams* v. *Williams*, 407 U.S. 143, 92 S.Ct. 1921, 1924, 32 L.Ed.2d 612 (1972), this Court said that, at least in responding to a citizen's complaint or a tip by a credible informant, "the subtleties of the hearsay rule should not thwart an appropriate police response." And, in the seminal anonymous-informant case of *Illinois* v. *Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the Court said: "It is enough that there was a fair probability that the writer of the anonymous letter had obtained his entire story *either* from the Gateses *or someone they trusted*." *Gates*, 103 S.Ct. at 2336 (emphasis added).

The Fourth Amendment does not require informants to witness the reported criminal activity firsthand, and their hearsay evidence, rather than being barred, can be considered by police in determining whether to act on a tip.

Second, the appellate court stated: "A reasonable and articulable suspicion requires more than corroboration of innocent details." *Yarber*, 663 N.E.2d at 1138. Thus, the court complained that police "were unable to independently verify any of the informant's allegations of criminal activity" and failed "to corroborate anything other than innocent minutia." *Id.* at 1137-38. In contrast, this Court has held the Fourth Amendment does not place these requirements on police.

In *Draper* the petitioner was arrested before agents observed his heroin; but it was lawful because they had verified every facet of the known informant's tip "except whether petitioner had accomplished his mission and had the three ounces of heroin on his person or in his bag." *Draper*, 79 S.Ct. at 333. Two decades later this Court pointed out "that *all* of the corroborating detail established in *Draper*[ ] was of entirely innocent activity." *Gates*, 103 S.Ct. 2335 at n. 13 (emphasis in *Gates*). *Terry* in turn affirmed a temporary stop made without probable cause to arrest where a city police officer observed petitioner and two companions "go through a series of acts, each of them perhaps innocent in itself, but which taken together warranted further investigation." *Terry*, 88 S.Ct. at 1880-81.

Then in *Reid* v. *Georgia*, 448 U.S. 438, 100 S.Ct. 2752, 2754, 65 L.Ed.2d 890 (1980), this Court accurately predicted the course of Fourth Amendment jurisprudence when it said that "there could, of course, be circumstances in which wholly lawful conduct might justify the suspicion that criminal activity was afoot." In *Gates* the Court noted the principle that the relevant inquiry in determining probable cause "is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts." *Gates*, 103 S.Ct. at 2335 n. 13. Today, "[t]hat principle applies equally well to the reasonable suspicion inquiry." *United States* v. *Sokolow*, 490 U.S. 1, 109 S.Ct. 1581, 1587, 104 L.Ed.2d 1 (1989) (citing *Gates*, 103 S.Ct. at 2335 n. 13). That principle was applied in *Alabama* v. *White*, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), which found an anonymous informant's tip, only partly corroborated by police observation and only of innocent conduct, nonetheless permitted the *Terry* stop at issue.

Here however, the appellate court repeated the error the Illinois Supreme Court made some 15 years earlier when it

affirmed a suppression order, in part because it concluded a warrant could not issue if "only 'innocent' details are corroborated." *Gates*, 103 S.Ct. at 2327-28. Rather, as in *Gates*, 103 S.Ct. at 2335, it was enough that here " '[c]orroboration through other sources of information reduced the chances of a reckless or prevaricating tale.' " Thus, although the appellate court speculated that this respondent may have been the victim of a "malicious prank" (*Yarber*, 663 N.E.2d at 1138), that chance need only have been reduced, not eliminated, by the officers' corroboration of the tip through other sources of information.

The Fourth Amendment does not require police to confirm the wrongdoing an anonymous informant reports; neither does it require them to observe a criminal act before investigating further, before making a *Terry* stop. Rather, corroboration of a tip by observing predicted, albeit entirely innocent activity allows police intervention.

Third, the appellate court also found the tips were not sufficiently corroborated to raise a reasonable suspicion. *Yarber*, 663 N.E.2d at 1137-38. The court complained that police fell "far short of a positive identification" of respondent at the train station shortly before the Chicago-bound train departed, that they failed "to find even one person who could establish that Yarber was, in fact, on board the [train to Chicago]," that they "were similarly unable to determine that Yarber was on the November 9, 1994, Amtrak train from Chicago to Carbondale," and that "nothing about the tip established the informant's basis of knowledge." *Id.* at 1137. In so doing the court misread the standards of *Gates* and *White* and overlooked direct testimony the trial court apparently credited.

Further, although acknowledging there is merit in corroborating an informant's prediction of a suspect's future behavior, the appellate court seriously undervalued it. The

court said, "The prediction of future activity lends some degree of credibility to the tip." *Yarber*, 663 N.E.2d at 1137 (citing *White*, 110 S.Ct. at 2417). But, in *White* this Court said:

> What was important was the caller's ability to predict respondent's *future behavior*, because it demonstrated inside information—a special familiarity with respondent's affairs. . . . When significant aspects of the caller's predictions were verified, there was reason to believe not only that the caller was honest but also that he was well informed, at least well enough to justify the stop.

White, 110 S.Ct. at 2417 (emphasis in *White*).

And, here, a singularly significant aspect of the tip was verified. The informant's second call told police respondent had just left on the 4 o'clock train "to Chicago to get more drugs and would be back the next day on the train." (R. C160, C163) The next day was November 9th, and Officer Dee Cross, among others, met the train from Chicago. (R. C176-77) Cross saw respondent, whom she recognized from his photograph, get off the train 3 to 4 minutes after it stopped. (R. C142-43, C158) Sgt. Ledbetter also saw him get off the train. (R. C203) Having *seen* respondent get off the train, police, contrary to the view of the Illinois Appellate Court, did verify the informant's prediction of respondent's future behavior.

This respondent returned in the predicted manner on the predicted day. The prediction, as confirmed, was more precise than the similar one in *Draper*, 79 S.Ct. at 331, where the informant had predicted the suspect would return on either of two days.

And, in *Draper* there was no corroboration whatsoever of the informant's statement that Draper had left by train on September 6th for Chicago. *Id.* Here, however, the Amtrak

station agent told police within two hours of respondent's alleged departure that he was "almost positive" he had seen respondent at the train station, asking for change, shortly before the Chicago-bound train left. (R. C173-74) He did not see respondent after the train left, and police were unable to contact respondent at his dorm that evening or the next day. (R. C174-76) This evidence, "albeit not with certainty" (*Gates*, 103 S.Ct. at 2335), made it more likely than not respondent departed as the informant said. Thus, the evidence surpasses the level of proof needed to establish reasonable suspicion to execute a *Terry* stop.

That requisite level of proof was summarized by the Court in *Sokolow*.

> The Fourth Amendment requires "some minimum level of objective justification" for making the stop. That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence. We have held that probable cause means "a fair probability that contraband or evidence of a crime will be found," and the level of suspicion required for a *Terry* stop is obviously less demanding than that for probable cause."

Sokolow, 109 S.Ct. at 1585 (citations omitted).

Thus, "reasonable suspicion can arise from information that is less reliable than that required to show probable cause." *White*, 110 S.Ct. at 2416.

Here, the tip was more completely corroborated in several of its aspects than the one in *White* which permitted a *Terry* stop. In *White* police saw someone of the correct gender leave the correct apartment building and enter the described vehicle; they did not see her leave the predicted apartment. *Id.* at 2416-17. When she left, she was not carrying a brown attache case although the anonymous informant had said she would be. *Id.* at 2414. And, police did not know her name until after making the stop. *Id.* at 2416.

But here, Carbondale Police Officers Cross and Ledbetter recognized respondent getting off the train; Cross knew who he was before she stopped him. Also, police knew it was likely he had left on the northbound train the day before, and he did return when and in the manner predicted.

Because they corroborated both the innocent details of respondent's life and the precise details of his predicted travel plans, the police had ample reason to believe their caller was honest, reliable, and well informed. Also, the caller demonstrated at least some basis for his or her knowledge by telling the police, "[M]y best friends buy pot from Mr. Yarber all the time." (R. C127-28)

Accordingly, the Illinois Appellate Court's holding is contrary to this Court's Fourth-Amendment holdings. It erroneously shrinks the meaning of "reasonable suspicion" and thereby places greater restrictions on State law-enforcement officers on the basis of the federal constitution than this court has. Thus, the appellate court's holding also violates the command that a State may not impose greater restrictions on police activity "as a matter of *federal constitutional law* when this Court specifically refrains from imposing them." *Oregon* v. *Hass*, 420 U.S. 714, 95 S.Ct. 1215, 1219, 43 L.Ed.2d 570 (1975) (emphasis in *Hass*).

Lastly, the appellate court's holding places the Crime Stoppers network in grave jeopardy because it creates a standard not required by the Fourth Amendment, one expressly rejected by this Court, one "that leaves virtually no place for anonymous citizen informants." *Gates*, 103 S.Ct. at 2332. But, "such tips, particularly when supplemented by independent police investigation, frequently contribute to the solution of otherwise 'perfect crimes,' " (*Id.*) drug trafficking, for example. And, the public, represented by the government, "has a compelling interest in identifying by all lawful means those who traffic in illicit drugs for

personal profit." *Florida* v. *Royer*, 460 U.S. 491, 103 S.Ct. 1319, 1329-30, 75 L.Ed.2d 229 (1983) (Powell, J., concurring). As Justice Powell observed:

> Few problems affecting the health and welfare of our population, particularly our young, cause greater concern than the escalating use of controlled substances. . . . And many drugs . . . may be easily concealed. As a result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement.

United States v. *Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 1881, 64 L.Ed.2d 497 (1980) (Powell, J., whom Burger, C.J., and Blackmun, J., joined, concurring in part and in the judgment).

This decision by the Illinois Appellate Court ought not be allowed to raise still more obstacles to the lawful detection of those who, like the university student here, traffic in illicit drugs for their personal profit.

Therefore, certiorari should be granted, the decision of the appellate court reversed and vacated, and the cause remanded for trial.

II.

THE REASONABLE SUSPICION WHICH PERMITS THE *TERRY* STOP OF A DEBOARDING TRAIN PASSENGER, SUSPECTED OF TRANSPORTING ILLICIT DRUGS BASED ON CORROBORATION OF ANONYMOUS TIPS RATHER THAN ON A DRUG-COURIER PROFILE, ALSO ATTACHES TO AND PERMITS TEMPORARY SEIZURE OF THE SUSPECT'S HAND-CARRIED LUGGAGE.

Based on their corroboration of two anonymous tips, police suspected respondent was transporting a load of cannabis and, after stopping him, seized his hand-carried luggage for examination by a narcotics detecting canine when a consent-based search of his person disclosed no

drugs. The second issue is the constitutionality of that seizure.

The particular question is whether the reasonable suspicion which permits the *Terry* stop of a deboarding train passenger, suspected of carrying illicit drugs based on corroboration of anonymous tips rather than on a drug-courier profile, also attaches to and permits temporary seizure of the suspect's hand-carried luggage for examination by a narcotics detecting canine.

That question, at least in the anonymous informants' context, has not been addressed by this Court. The answer, however, comes directly from Fourth Amendment principles evolved in the *Draper-Gates-White* line of informant cases and from drug-courier profile cases, such as *Royer* and *Place*. Under *Place* reasonable suspicion allows seizure of personal luggage; and under *White* a reliable tip provides reasonable suspicion; therefore, a reliable tip allows seizure of personal luggage.

The question was squarely before the trial court. And, the prosecutor correctly argued the answer at the suppression hearing: "Here, since the information received applied equally to the defendant *and his luggage*, the justification to detain the defendant constituted justification to detain his luggage." (R. C37: emphasis added) That justification, the requisite reasonable suspicion to detain respondent and his luggage, arose from tips by an anonymous informant and corroboration of those tips. It did not arise from respondent's fitting a drug-courier profile; it did not arise from telltale aspects of his recent travel-history; it did not arise solely from a police officer's observing suspicious activities.

Nonetheless, the trial court relied mostly on drug-courier profile cases and a few current-complaint cases to determine whether the temporary seizure of respondent's lug-

gage was lawful under the Fourth Amendment. It did not consider any case where an informant had predicted the suspect's future acts. At least one such federal case existed, however. See *United States* v. *Walker*, 7 F.3d 26, 31 (2nd Cir. 1993) (Where they had verified "nearly every aspect" of an anonymous tip, "the police had reasonable suspicion to seize Walker's bags for inspection" by a trained munitions dog.), *cert. denied*, 510 U.S. 1169, 114 S.Ct. 1201, 127 L.Ed. 2d 549 (1994).

Because the trial court, in the second part of its ruling on respondent's motion, relied only on drug-courier profile cases (which do require police to observe more than just a match to the profile: *Reid* v. *Georgia*, 448 U.S. 438, 100 S.Ct. 2752, 2754, 65 L.Ed.2d 890 (1980)) and current-complaint cases, it posed and answered the wrong question. The court stated, "The critical question in this case is: 'Did the information developed by the officers *after* this permissible stop give them reason to believe (reasonable suspicion) that the luggage possessed by defendant contained drugs?' " (R. C59: emphasis added) The court's answer was, "No," and, thus, it ordered the evidence suppressed. (R. C59) The appellate court did not address the propriety of the trial court's question but found, instead, there was no reasonable suspicion to justify seizing the luggage.

The trial court should have asked whether, under the totality of the circumstances, the tips as corroborated by the officers' observations also justified temporary seizure of the luggage for examination by a narcotics detecting canine.

In *Gates* the Court held an anonymous informant's tip that the Gateses were transporting drugs, as partly corroborated by the suspects' subsequent acts, established probable cause for issuance of a search warrant for both their home and their automobile. *Illinois* v. *Gates*, 462 U.S. 213, 103 S.Ct. 2317, 2326, 2335-36, 76 L.Ed.2d 527 (1983). The same

principle applies here. It applies to this respondent's hand-carried luggage because, in concert with *White*, *Royer*, and *Place*, it permits the temporary seizure of luggage based on reasonable suspicion derived from sufficiently corroborated or otherwise reliable, anonymous tips.

In *Royer* this Court agreed with the State's contention that the facts officers had at the time "were adequate grounds for suspecting Royer of carrying drugs and for temporarily detaining him *and his luggage* while they attempted to verify or dispel their suspicions in a manner that did not exceed the limits of an investigative detention." *Florida* v. *Royer*, 460 U.S. 491, 103 S.Ct. 1319, 1326, 75 L.Ed.2d 229 (1983) (plurality opinion) (emphasis added). And, just three weeks before deciding *Royer*, this Court in another courier-profile case made it clear that a canine sniff-test, that examination of luggage by a narcotics detecting dog does not exceed the limits of an investigative detention. *United States* v. *Place*, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983).

As explained in *Place*, 103 S.Ct. at 2639, the Fourth Amendment does not prohibit "law enforcement authorities from temporarily detaining personal luggage for exposure to a trained narcotics detection dog on the basis of reasonable suspicion that the luggage contains narcotics." Moreover, "where the authorities possess specific and articulable facts warranting a reasonable belief that a traveller's luggage contains narcotics, the governmental interest in seizing the luggage briefly to pursue further investigation is substantial." *Id.* at 2642.

The conclusion in *Place* is equally applicable here although in *Place* it was respondent's behavior at an airport which first aroused the interest of law enforcement officers (*Id.* at 2639-40):

> [W]hen an officer's observations lead him reasonably to believe that a traveler is carrying luggage that contains narcotics, the principles of *Terry* and its progeny would permit the officer to detain the luggage briefly to investigate the circumstances that aroused his suspicion, provided that the investigative detention is properly limited in scope.

Id. at 2644.

As argued above and as found by the trial court but not the appellate court, Carbondale Police had sufficient corroboration of the two anonymous telephone tips to justify investigatory detention of this respondent and the luggage he carried. It was the *officers' observations* of respondent arriving at the train station when and in the manner predicted which finally and firmly established the reasonableness of their suspicion that he was returning to Carbondale with a new load of cannabis. And, quite likely, it was a rather large quantity, at that.

Recall, the informant first reported that respondent sold "large amounts of pot out of his dorm room. . . . [A]ny time he attended parties anywhere he sold large amounts of pot also." (R. C126) The informant's "friends consistently bought pot from Mr. Yarber." (R. C126) They did so "all the time." (R. C127-28) Four hours later the informant told police respondent "had left on a train to Chicago to get more drugs." (R. C160)

Thus, as Officer Cross watched respondent deboard the next evening, she did so understanding he had gone "[t]o pick up a load of cannabis," that he "would be coming back on the train with a load of cannabis." (R. C157-58) This is what she expected to find when she asked him to stop, if he was carrying "drugs and/or weapons," and if she could look. (R. C145-46, C180-81) Respondent stopped, set his bags down, stepped five to ten feet away, and said she could search him but not his bags. (R. C145-46, C180-81)

Important here is Officer Cross's testimony indicating her suspicions focused concurrently on both the respondent and his luggage. She told the court that from the moment respondent stopped she always considered he was free to leave. (R. C133-34) However, had he chosen to leave, she would not have allowed him to take his bags. (R. C134, C147-48)

Cross did not impermissibly seize the bags because respondent refused to consent to their being searched. Rather, she seized them because the search of respondent's person did nothing to dispel the reasonable suspicion which lawfully engulfed both respondent and his luggage. Moreover, if he was returning with a load of cannabis, it was more likely in his luggage than on his person.

Under the totality of the circumstances, Carbondale Police, based on their corroboration of the two anonymous tips, had a reasonable suspicion that respondent was transporting illicit drugs, on his person, in his luggage, or both. Thus, the temporary seizure of respondent and his luggage was reasonable and is permitted by the Fourth Amendment. So too, was the continued detention of the luggage for examination by a narcotics detecting canine reasonable and constitutionally permissible.

Therefore, certiorari should be granted, the decision of the appellate court reversed and vacated, and the cause remanded for trial.

III.

THE ILLINOIS APPELLATE COURT ERRONEOUSLY IMPOSED GREATER RESTRICTIONS ON POLICE DETENTION OF LUGGAGE SEIZED FOR A CANINE SNIFF-TEST THAN HAVE *PLACE* AND SIX CIRCUITS OF THE UNITED STATES COURT OF APPEALS.

Based on their corroboration of two anonymous tips, police suspected respondent was transporting a load of

cannabis and, after seizing his hand-carried luggage, took it to the police station where a narcotics detecting canine alerted to it forty-four minutes after respondent walked free from the *Terry* stop toward his local residence. The third issue is the constitutionality of that 44-minute detention of his luggage: whether it exceeded the permissible limits of a *Terry*-type investigative stop.

In *United States* v. *Place*, 462 U.S. 696, 103 S.Ct. 2637, 2642, 77 L.Ed.2d 110 (1983), this Court recognized that reasonable suspicion justifies the warrantless seizure and temporary detention of a traveler's personal luggage for limited investigation short of opening it. Examination of luggage by a narcotics detecting canine, because it does not constitute a search, is permissible provided the seizure does not exceed "the permissible scope of an investigative detention," that it is not conducted in a manner which places "the seizure within the general rule requiring probable cause for a seizure." *Id.* at 2645.

Here, the trial court, in the third part of its ruling on respondent's motion to suppress evidence, found "no fault with the procedure employed by the officers after the baggage was detained." (R. C59; C227) The appellate court, however, disagreed: it found the 44-minute detention of the luggage was "unreasonable in duration." *People* v. *Yarber*, 279 Ill.App.3d 519, 215 Ill.Dec. 617, 663 N.E.2d 1131, 1138 (5th Dist. 1996).

At 5:30 p.m., after Carbondale police had determined to meet the evening train from Chicago, Sgt. Ledbetter learned the city's drug detecting canine, Jasper, could not work in public places because his liability insurance had not been verified. (R. C140, C147, 209, C217) Because Ledbetter had been on duty since 8:00 in the morning and knew he would have to be at the train station by 9:00 that evening, he did not attempt to arrange for another dog. (R.

C218) Thus, no canine met respondent when he arrived less than four hours later at 9:15. (R. C142-43) When respondent refused to consent to a search of his luggage, police at the scene tried to secure a canine from the State Police and then the Sheriff of nearby Williamson County but could not. (R. C146, C140-41, C209) Realizing their canine could work at the city police station, that he was the closest, most expeditiously available one, and not wanting respondent standing around in the parking lot any longer, officers decided to take his luggage to the police station. (R. C150, C152, C209, C214-15)

Thus, at 9:36 p.m. Officer Cross told respondent he was free to go but that she was keeping his luggage and would take it to the Carbondale Police Station for examination by a narcotics detecting canine. (R. C133, C149-50) Both Cross and Ledbetter told respondent he was free to leave the scene, and he did; he took off, walking south toward campus, toward his campus residence. (R. C138, C150, C210, C214) Just forty-four minutes later, at 10:20 p.m. at the police station Jasper indicated the luggage contained illicit drugs. (R. C151, C135-36, C216)

In its decision the appellate court stated that "without probable cause to arrest or to obtain a search warrant, the officers seized Yarber's bags." *Yarber*, 663 N.E.2d at 1138. The court complained that although they "*believed* that Yarber was on a specific train," although they "knew when the train was scheduled to arrive," and although they "knew for at least four hours prior to the train's arrival that Jasper was unavailable to work in public places," the police "officers made no alternative arrangements." *Id.* (emphasis added).

The appellate court's decision effectively requires police to have a narcotics detecting canine available on the scene before making a *Terry* stop if they "believe" the suspect will

arrive on the conveyance predicted and "know" when it is "scheduled to arrive." On the other hand, in finding police did not have reasonable suspicion to stop respondent in the first place, the court faulted the officers because they were "unable to *determine* that Yarber was on the November 9, 1994, Amtrak train from Chicago to Carbondale." *Id.* at 1137 (emphasis added). It is incongruous that the mere *belief* a suspect will arrive when and in the manner predicted requires the immediate presence of a trained canine at the scene of a possible *Terry* stop, but the failure to make the much more substantial *determination* beforehand that the suspect is actually on board constitutes failure to corroborate an anonymous tip and prevents formation of reasonable suspicion to make the stop. These requirements are inherently incompatible and cannot stand together or, even, individually.

Neither this Court in *Place* nor any circuit of the United States Court of Appeals to address the issue has held that a belief the suspect is on a particular conveyance requires the immediate presence of a sniff-test canine at the scene when the projected *Terry* stop is made. In *Place*, 103 S.Ct. at 2640, 2645, agents had talked with the suspect at the airport in Miami, had allowed him to board his flight to La Guardia Airport without searching his luggage, and "knew the time of Place's scheduled arrival at La Guardia." What they knew about Place's travel itinerary far exceeded what Carbondale police knew about Mr. Yarber's.

And "knowing" has been the significant factor for United States Courts of Appeals, too. Thus, the Ninth Circuit affirmed that a 2-hour delay in obtaining the services of a narcotics detecting canine was unreasonable where agents knew which flight the suspect had boarded and other agents met the flight when it landed. *United States* v. *$191,910.00 in U.S. Currency*, 16 F.3d 1051, 1054-55, 1062

(9th Cir. 1994). The court stated that where "government agents are at the airport awaiting a particular individual who they *know* is coming on a particular flight and whom they suspect of drug trafficking, they should arrange for a dog to be sent to the appropriate location as soon as they decide to meet the plane themselves." *Id.* at 1061 (emphasis added). However, the court agreed that "[a]s a general proposition, there is no legal requirement that the police keep a dog stationed at the airport gate." *Id.*

Likewise, the First Circuit, after analyzing *Place*, observed that "[g]iven the frequent delays in air traffic, an absolute requirement that DEA agents have a dog waiting near the gate whenever a sniff test of a *known suspect's* baggage is either probable or possible would seem excessively burdensome." *United States* v. *West*, 731 F.2d 90, 92 (1st Cir. 1984) (45- to 60-minute detention reasonable) (emphasis added). The court found instead that "the government must have its dog either at the same airport or at a similarly accessible location, so that the dog can sniff the suspect's luggage with dispatch." *Id.* Similarly, in *United States* v. *Cooper*, 873 F.2d 269, 275 (11th Cir. 1989), the Eleventh Circuit stated it was "unwilling to hold that police must have a dog on site at the airport at all times, ready to sniff at a moment's notice."

The Fourth Circuit in *United States* v. *Alpert*, 816 F.2d 958, 964 (4th Cir. 1987) observed that Supreme Court precedents, including *Place*, did not "require the imposition of a *per se* rule requiring that narcotics dogs be kept at each airport where *Terry*-stops are used in the interdiction of drug traffic." Thus, it expressly declined to establish "a *per se* rule that the police keep their narcotics dogs at the airport whenever they are observing incoming flights for drug couriers." *Id.* at 963. The 50-minute delay in presenting a briefcase to a narcotics detecting canine, which in-

cluded a 10- to 15-minute drive from the airport to the police academy that housed the dog, "was no longer than the circumstances of the case required." *Id.* at 960, 964.

In *United States* v. *Frost*, 999 F.2d 737, 741-42 (3rd Cir. 1993), the Third Circuit found an 80-minute detention was not unreasonable. Neither the fact that no canine unit was on duty at the airport on the day in question nor the fact that at 6 o'clock in the evening it took nearly an hour to get a dog to the airport "demonstrated a lack of diligence." *Id.*

And, over a decade ago the Seventh Circuit stated that the "inability to know in advance whether a dog will be needed means that imposing an absolute maximum time requirement would be overly burdensome, absent some indication that the agents were derelict in some way." *United States* v. *Borys*, 766 F.2d 304, 314 (7th Cir. 1985). Thus, the court affirmed the propriety of a 75-minute detention at O'Hare Airport because, as it concluded, although the officers "*knew they might need* a drug detecting dog, . . . they are not required to have a dog immediately available, only readily available." *Id.* (emphasis added).

Thus, even had Carbondale police believed respondent would be on the evening train from Chicago, that level of knowledge is not sufficient to require the immediate presence of a canine at the train station.

Moreover, requiring the immediate presence of a canine at the Carbondale train station for the stop is, on the local scale, tantamount to requiring the dog meet the suspect at the airport gate. As the trial court most surely knew "in light of the distinctive features . . . of the community" (*Ornelas* v. *United States*, ___ U.S. ___, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911 (1996)) and the appellate court should have acknowledged, Carbondale is little larger in area than O'Hare Airport. The city police station is likely little more than a concourse or two away—probably no far-

ther away than the canine kennels that serve giant airports like Chicago's O'Hare (*Borys*), New York's La Guardia (*Place*), Boston's Logan (*West*), Atlanta's Hartzfield (*Cooper*), or even the smaller communities of Oakland (*$191,910.00*) and Pittsburgh (*Frost*). Certainly it is much closer than the police academy which housed the Charlotte, N.C., dog in *Alpert*.

Here, not until Officer Cross and Sgt. Ledbetter saw respondent get off the train in Carbondale did police know he was on that train; not until then did they have final corroboration of the tips; but by then it was too late to have any canine immediately available on the scene. Under these circumstances no federal court of review has required the immediate presence of a narcotics detecting canine, and it is unreasonable to view the Fourth Amendment as doing so.

Anyway, a canine might not have been needed.

This respondent could have consented to a search of his luggage, just as White straightway consented to the search of her car or as Walker belatedly consented to the search of his luggage upon learning a trained canine would arrive in 20 to 30 minutes. See *Alabama* v. *White*, 496 U.S. 325, 110 S.Ct. 2412, 2415, 110 L.Ed.2d 301 (1990); *United States* v. *Walker*, 7 F.3d 26, 28 (2nd Cir. 1993). Accordingly, requiring that a narcotics detecting canine be present for the stop, that one be at the scene from the beginning, would be counter to the judicially recognized importance of "allow[ing] authorities to graduate their responses to the demands of any particular situation." *Place*, 103 S.Ct. at 2646 n. 10.

Such a requirement would also force police to decide, most likely on highly technical, legal grounds, which of two impending arrests to sacrifice where, for example, the dog is at the train station awaiting a suspect when police make a lawful stop some distance away and have reason to think

that suspect, too, is trafficking in marijuana. The judicial outcome of such a decision could well hinge on data not available to police at the time: namely, the vagaries of rail traffic, which, not unlike the air traffic considered in *West*, is subject to delays. The Eighth Circuit sheathed at least this sword of Damocles when it stated that "local government police forces and the state highway patrol cannot be expected to have drug dogs immediately available to all officers in the field at all times." *United States* v. *Bloomfield*, 40 F.3d 910, 917 (8th Cir. 1994) (one-hour delay not unreasonable).

Requiring more, requiring the immediate presence of a narcotics detecting canine at all anticipated stops places unwarranted restraints on police that merely raise additional obstacles to the lawful detection of drug traffickers without enhancing Fourth Amendment protections. The Fourth Amendment does not require more, and it was unreasonable for the Illinois Appellate Court to view it as doing so.

Important too, none of the exacerbations that so influenced this Court's decision in *Place* were present here. *See* 103 S.Ct. at 2646. For example, Carbondale police told respondent they were taking his luggage to the city's police station. (R. C150, C210) They told him he could come with them then to get a receipt or he could come by the next day. (R. C150, C210-11) With that receipt he could get his luggage back after the sniff test. (R. C212) They truthfully said his luggage was being seized for a canine sniff-test (R. C150, C209-10, C212); whereas, the agents in *Place*, 103 S.Ct. at 2640, falsely asserted they were taking it to a judge for issuance of a search warrant. Carbondale police assured respondent his luggage would not be opened unless the dog reacted affirmatively and, then, only if they were able to secure a search warrant. (R. C184, C210-11)

Lastly, in further contrast with the situation in *Place*, 103 S.Ct. at 2645, the seizure of respondent's luggage here was "less intrusive than seizures of the person." His "liberty interest in proceeding with his itinerary" (*Id.*) was only marginally impacted, if at all. Respondent had just returned to his home-away-from-home; his journey was nearly completed. After an 18- to 20-minute delay at most, he continued on his way; he walked away from the stop, free, toward his nearby campus residence. Most likely Yarber was not deprived, even temporarily, of any needed personal items: except possibly his marijuana.

Although the canine's services were not immediately utilized, the delay was not inordinate and did not impermissibly infringe any protected Fourth Amendment interest. Yet, by its decision the Illinois Appellate Court, contrary to the command of *Oregon* v. *Hass*, 420 U.S. 714, 95 S.Ct. 1215, 1219, 43 L.Ed.2d 570 (1975), put greater restrictions on State law-enforcement officers based on the federal constitution than this Court did in *Place* and than six circuits of the United States Court of Appeals have.

Therefore, certiorari should be granted, the decision of the appellate court reversed and vacated, and the cause remanded for trial.

CONCLUSION

For the foregoing reasons, petitioner prays that this Court grant the instant Petition for Writ of Certiorari and, upon review, reverse and vacate the decision of the Illinois Appellate Court, Fifth Judicial District, and remand the cause with instructions that it be remanded to the Circuit Court of the First Judicial Circuit, Jackson County, Illinois, for trial.

Respectfully submitted,

JAMES E. RYAN
Attorney General of Illinois

BARBARA A. PREINER
Solicitor General of Illinois

ARLEEN C. ANDERSON
Counsel of Record
Assistant Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3000

NORBERT J. GOETTEN
Director
ROBERT J. BIDERMAN
Deputy Director
CHARLES F. MANSFIELD
Staff Attorney
State's Attorneys
Appellate Prosecutor
725 South Second Street
Springfield, Illinois 62704
(217) 782-8076

Counsel for Petitioner

Of Counsel:

MICHAEL WEPSIEC
State's Attorney
Jackson County Courthouse
Murphysboro, Illinois 62966
(618) 687-7200

APPENDICES

APPENDIX A

279 Ill.App.3d 519, 215 Ill.Dec. 617, 663 N.E.2d 1131

The PEOPLE of the State of Illinois, Plaintiff-Appellant,
v.
Samuel YARBER, Defendant-Appellee.

No. 5-95-0143.
Appellate Court of Illinois,
Fifth District.

April 16, 1996.

Appeal from the Circuit Court of Jackson County. No. 94-CF-542; Honorable David W. Watt, Judge, presiding.

Michael Wepsiec, State's Attorney, Murphysboro; Norbert J. Goetten, Director; Robert J. Biderman, Deputy Director; Charles F. Mansfield, Staff Attorney; State's Attorneys Appellate Prosecutor, Springfield, for Appellant.

Daniel M. Kirwan, Deputy Defender; Rita K. Peterson, Assistant Defender; Office of the State Appellate Defender, Mount Vernon, for Appellee.

Justice KUEHN delivered the opinion of the court:

On Wednesday, November 9, 1994, at approximately 9:15 p.m., defendant Samuel Yarber (Yarber) arrived in Carbondale, Illinois, on an Amtrak train. He exited the train and began walking towards the station parking lot. As he was walking, he was approached by Carbondale police officer Dee Cross, who called Yarber by name. Officer Cross asked Yarber for identification. Yarber produced his driver's license and Southern Illinois University identification card. Officer Cross informed Yarber that she had reason to suspect that he possessed drugs. She asked Yarber if he had

drugs. Yarber responded negatively. Officer Cross then requested consent to search Yarber's two bags and his person. Whether or not Yarber consented to a search of his person is disputed. Officer Cross conducted a limited search of Yarber's person, which yielded nothing. Yarber denied consent to search his two bags.

Officer Cross consulted with the four other officers in attendance regarding what to do in light of Yarber's refusal to consent. The police officers decided to have a dog trained in narcotics detection brought to the Amtrak station to sniff Yarber's bags. Prior to their arrival at the station, the officers were aware that the Carbondale police department narcotics dog, Jasper, could not be brought to the station because he lacked liability insurance for work in public places. The police officers contacted the Illinois State Police to determine if its dog was available. The Illinois State Police narcotics dog was unavailable. A call to Williamson County to check on the availability of its dog was similarly unsuccessful.

While the police officers made these calls, Yarber stood next to his luggage. The police officers claimed that they advised Yarber he was free to leave and that he chose to remain with the officers. Yarber claims that he was never so advised.

Finally, the police officers decided to seize Yarber's two bags and transport them to the Carbondale police department headquarters, where Jasper could conduct his sniff test. Yarber was advised that if he accompanied the officers to police headquarters, a receipt for his bags would be provided.

The length of detention from police contact as Yarber exited the train until the bags were seized was also in dispute. The parties agree that the detention lasted longer

than 15 minutes. While Yarber was free to leave, he was not allowed to take his bags and was advised that if he attempted to do so, he would be arrested.

Later that evening at the Carbondale police department headquarters, Jasper sniffed and alerted on both of Yarber's bags. On the basis of an anonymous tip and the alert, a search warrant was obtained for both bags. A search of the bags revealed that one contained approximately two pounds of cannabis. The other bag did not contain cannabis. (FN1)

Yarber was charged with unlawful possession of more than 500 grams of cannabis with intent to deliver, a Class 2 felony. 720 ILCS 550/5(e) (West 1992). Yarber filed a motion to suppress the cannabis and all testimony regarding the cannabis, claiming that the stop, detention, and seizure were illegal.

At the hearing, testimony focused upon information provided by the anonymous informant. On November 8, 1994, at approximately noon, an anonymous informant telephoned the Crimestoppers line, staffed by the Carbondale police department. The informant claimed that her best friends purchased cannabis on a regular basis from a man by the name of Samuel Yarber and that he sold cannabis at parties. The informant provided Yarber's general physical description (race, height, and weight), provided his dormitory address at Southern Illinois University, and indicated that he lived alone at that address and that he worked at the Lentz Hall cafeteria. Four hours later, the anonymous informant called back and indicated that Yarber would leave that date by Amtrak train bound for Chicago, Illinois, returning by Amtrak train to Carbondale on November 9, 1994. The purpose of this trip to Chicago was to purchase cannabis.

In an effort to confirm the details of the anonymous tips, the Carbondale police department contacted university law enforcement officials, who confirmed that Yarber was a Southern Illinois University student and resided alone at the address provided by the informant. A check with Yarber's employer revealed that he had not worked in the cafeteria for several days. A criminal background check was helpful in confirming Yarber's race, height, and weight.

University officials proceeded to the Amtrak station on November 8, 1994. The train bound for Chicago had already departed. Amtrak maintained no list of passengers, and so there was no way to confirm that Yarber was on board that train. An Amtrak employee, Nelson Miesner, when shown a Polaroid photograph of Yarber's college identification card photograph, indicated that he was "almost positive" that Yarber had been in the train station earlier that date, requesting change. University officials also checked the Amtrak reserved list for the November 9, 1994, train originating in Chicago, but Yarber was not on the list. Repeated telephone calls to a telephone number listed for Yarber went unanswered. An answering machine picked up on each occasion, identifying the absent occupant as "Frostbite."

Following a hearing, the trial court granted Yarber's motion to suppress. The State appeals. The State claims that the trial court erred in suppressing the evidence. We disagree and affirm the trial court.

The trial court found that the Carbondale police officers had a reasonable basis to stop Yarber, but that the officers inappropriately seized his bags. We agree with the trial court's order of suppression, but we do so for a different reason. On appeal, a reviewing court can sustain a decision of the trial court for any appropriate reason, regardless of

whether the trial court relied on those grounds, and regardless of whether the trial court's reasoning was correct. *People* v. *Novak*, 163 Ill.2d 93, 101, 205 Ill.Dec. 471, 476, 643 N.E.2d 762, 767 (1994).

With a motion to suppress evidence, the defendant bears the burden of proof to establish that the search and seizure were unreasonable. *People* v. *Neal*, 109 Ill.2d 216, 218, 93 Ill.Dec. 365, 366, 486 N.E.2d 898, 899 (1985). A reviewing court will not reverse the trial court, unless the order of suppression is manifestly erroneous. *Neal*, 109 Ill.2d at 218, 93 Ill.Dec. at 366, 486 N.E.2d at 899.

The warrant clause of the fourth amendment provides that "no Warrants shall issue, but upon probable cause * * *." U.S. Const., amend. IV. Accordingly, valid search warrants and arrest warrants may only issue upon a showing of probable cause. *United States* v. *Harris*, 403 U.S. 573, 584, 91 S.Ct. 2075, 2082, 29 L.Ed.2d 723, 734 (1971) (search warrant); *Henry* v. *United States*, 361 U.S. 98, 102, 80 S.Ct. 168, 171, 4 L.Ed.2d 134, 138-39 (1959) (arrest warrant).

The United States Supreme Court created a limited exception to the fourth amendment probable cause requirement for seizures, in *Terry* v. *Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). In *Terry*, the court recognized that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *Terry*, 392 U.S. at 22, 88 S.Ct. at 1880, 20 L.Ed.2d at 906-07. *Terry* permitted a brief stop of a suspicious individual in order to ascertain his identity or to maintain the status quo while obtaining additional information. *Terry*, 392 U.S. at 21-22, 88 S.Ct. at 1880, 20 L.Ed.2d at 906-07. The stop's purpose

was to investigate the articulable suspicions of the officer that the person stopped had committed or was about to commit a crime. *Terry*, 392 U.S. at 21, 30, 88 S.Ct. at 1880, 1884, 20 L.Ed.2d at 906, 911. With all *Terry* stops, the police officer's conduct must be reasonable under the circumstances known to the officer at the time he initiated the stop. *Terry*, 392 U.S. at 27, 88 S.Ct. at 1883, 20 L.Ed.2d at 909; *People* v. *Long*, 99 Ill.2d 219, 229, 75 Ill.Dec. 693, 697, 457 N.E.2d 1252, 1256 (1983). To be considered reasonable, a *Terry* stop must be based upon more substantial facts than a police officer's hunch. *Terry*, 392 U.S. at 22, 88 S.Ct. at 1880, 20 L.Ed.2d at 906; *People* v. *Smithers*, 83 Ill.2d 430, 435-36, 47 Ill.Dec. 322, 326, 415 N.E.2d 327, 331 (1980). To justify a temporary detention, the police officers must point to specific, articulable facts which, when considered with natural inferences, make the intrusion reasonable. *Smithers*, 83 Ill.2d at 436, 47 Ill.Dec. at 326, 415 N.E.2d at 331, citing *People* v. *McGowan*, 69 Ill.2d 73, 78, 12 Ill.Dec. 733, 735, 370 N.E.2d 537, 539 (1977).

In *Adams* v. *Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), the permissibility of *Terry* stops was extended, from stops based only upon a police officer's personal observation, to stops based upon an informant's tip. The Supreme Court stated that the informant's tip was stronger than an anonymous tip because the informant previously provided accurate information to the police. *Adams*, 407 U.S. at 147, 92 S.Ct. at 1924, 32 L.Ed.2d at 617. The informant's tip conveyed sufficient "indicia of reliability" to justify the police officer's forcible stop. *Adams*, 407 U.S. at 147, 92 S.Ct. at 1924, 32 L.Ed.2d at 617. The defendant's failure to comply with the police officer's request to step out of his car further justified the police officer's action. *Adams*, 407 U.S. at 148, 92 S.Ct. at 1924, 32 L.Ed.2d at 618.

The United States Supreme Court addressed anonymous tips in a probable cause context in *Illinois* v. *Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). An anonymous informant contacted the police by letter asserting that the Gateses, who resided in a Chicago suburb, were drug traffickers. *Gates*, 462 U.S. at 225, 103 S.Ct. at 2325, 76 L.Ed.2d at 540. The letter further included the Gateses' drug trafficking routine. Mrs. Gates always drove a car to Florida, left the car in Florida, and flew back to Chicago. Mr. Gates always flew down to Florida and drove back in the same car with the drugs in the trunk. The informant also predicted the dates of the next drug run. Upon receipt of the letter, the police began to verify the details of the letter. The Secretary of State was able to confirm that Lance Gates had an Illinois driver's license. *Gates*, 462 U.S. at 225-26, 103 S.Ct. at 2325, 76 L.Ed.2d at 540. An "L. Gates" made an airline reservation to Florida on a date consistent with information contained within the letter. *Gates*, 462 U.S. at 226, 103 S.Ct. at 2325-26, 76 L.Ed.2d at 540. Lance Gates was observed boarding the flight in Chicago and deplaning in Palm Beach, Florida. *Gates*, 462 U.S. at 226, 103 S.Ct. at 2326, 76 L.Ed.2d at 540. The police determined that Lance Gates spent the night at a hotel with a woman who registered as Susan Gates. The following day, the couple left the hotel and began driving in a northerly direction on a road commonly used by travelers heading to Chicago. The license plate of the vehicle occupied by Mr. Gates and the unidentified woman was registered to a vehicle owned by the Gateses. *Gates*, 462 U.S. at 226, 103 S.Ct. at 2326, 76 L.Ed.2d at 540-41.

The Supreme Court concluded that the anonymous letter alone was insufficient to support a finding of probable cause. *Gates*, 462 U.S. at 227, 103 S.Ct. at 2326, 76 L.Ed.2d at 541. By corroborating the details of the informant's tip,

probable cause existed to issue the search warrant. *Gates*, 462 U.S. at 246, 103 S.Ct. at 2336, 76 L.Ed.2d at 553.

In reaching this decision, the Court in *Gates* adopted a new totality of the circumstances approach to probable cause analysis in situations dealing with informants. *Gates*, 462 U.S. at 238, 103 S.Ct. at 2332, 76 L.Ed.2d at 548. Prior to *Gates*, a two-pronged test was applied in determining the existence of probable cause with information provided by informants. *Aguilar* v. *Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964). The first prong was the basis of the informant's knowledge that a certain person had been, was, or would be involved in criminal conduct or that evidence of a crime would be located at a certain place. *Aguilar*, 378 U.S. at 114, 84 S.Ct. at 1514, 12 L.Ed.2d at 729. The second prong involved the veracity of the informant. *Aguilar*, 378 U.S. at 114-15, 84 S.Ct. at 1514, 12 L.Ed.2d at 729. With the totality of the circumstances approach, a deficiency in one element can be made up by the strength of the other element. *Gates*, 462 U.S. at 233, 103 S.Ct. at 2329, 76 L.Ed. 2d at 545. Veracity, reliability, and basis of knowledge remain "highly relevant in determining the value of [the informant's] report." *Gates*, 462 U.S. at 230, 103 S.Ct. at 2328, 76 L.Ed.2d at 543.

Veracity, reliability, and basis of knowledge are also relevant in a *Terry* reasonable-suspicion context, although allowance must be made in applying them for the lesser showing required to meet this standard. *Alabama* v. *White*, 496 U.S. 325, 328-29, 110 S.Ct. 2412, 2415, 110 L.Ed.2d 301, 308 (1990). In *White*, the Supreme Court confirmed that an anonymous tip can form the basis for a *Terry* stop, so long as the tip bears some indicia of reliability and/or other information establishes the "requisite quantum of suspicion." *White*, 496 U.S. at 329-30, 110 S.Ct. at 2416, 110 L.Ed.2d at 308-09.

The police agency in *White* received an anonymous telephone tip that a woman named Vanessa White would leave a particular apartment on that date and get into a brown Plymouth station wagon with a broken right taillight in the apartment parking lot. *White*, 496 U.S. at 327, 110 S.Ct. at 2414, 110 L.Ed.2d at 306-07. The informant further indicated that Vanessa White would drive the Plymouth to a particular motel and that approximately one ounce of cocaine would be in a brown attache case in her possession. *White*, 496 U.S. at 327, 110 S.Ct. at 2414, 110 L.Ed.2d at 307.

The police officers went to the apartment and observed the Plymouth in the parking lot. *White*, 496 U.S. at 327, 110 S.Ct. at 2414, 110 L.Ed.2d at 307. At some point, a woman emerged from the specified apartment and got into the Plymouth. The woman drove in the direction of the motel. Just short of the motel, the officers stopped the vehicle, advising the woman that they suspected she possessed cocaine. *White*, 496 U.S. at 327, 110 S.Ct. at 2414-15, 110 L.Ed.2d at 307. The officers obtained consent to search and found cannabis in the brown attache case. *White*, 496 U.S. at 327, 110 S.Ct. at 2415, 110 L.Ed.2d at 307. The officers also found cocaine in her purse.

The Court stated that the Vanessa White anonymous tip provided virtually no information from which a police officer could conclude that the informant was honest or that his information was reliable, because the informant provided no indication of the basis for the informant's predictions about Vanessa White's criminal activities. *White*, 496 U.S. at 329, 110 S.Ct. at 2415-16, 110 L.Ed.2d at 308, citing *Gates*, 462 U.S. at 227, 103 S.Ct. at 2326, 76 L.Ed.2d at 541. The Court stated that the Vanessa White anonymous tip, standing alone, did not justify a *Terry* stop. *White*, 496 U.S. at

329, 110 S.Ct. at 2416, 110 L.Ed.2d at 308, citing *Terry*, 392 U.S. at 22, 88 S.Ct. at 1880, 20 L.Ed.2d at 906-07.

The Court placed special emphasis on the informant's prediction of future behavior, which demonstrated a "special familiarity" with the affairs of the suspect. *White*, 496 U.S. at 332, 110 S.Ct. at 2417, 110 L.Ed.2d at 310. The Court also stated that the stop was valid because of the police officers' independent corroboration of significant aspects of the informer's predictions. The corroboration imparted a degree of reliability to the balance of the informant's predictions. Specifically, the Court found important that the officers corroborated Vanessa White's departure from the designated apartment in the Plymouth and the fact that she drove the most direct route towards the designated motel. *White*, 496 U.S. at 331, 110 S.Ct. at 2416-17, 110 L.Ed.2d at 309-10.

An Illinois case, *People* v. *Moraca*, 124 Ill.App.3d 561, 79 Ill.Dec. 714, 464 N.E.2d 312 (1984), involves an anonymous tip factually similar to the Yarber tip. In *Moraca*, a police officer, manning the Catch A Thief With Citizen's Help (CATCH) telephone line, received an anonymous tip that Giulio Moraca drove a blue van and was in the possession of a machine gun and cannabis. *Moraca*, 124 Ill.App.3d at 562, 79 Ill.Dec. at 715, 464 N.E.2d at 313. The informant provided the blue van's license plate number. The informant further indicated that Giulio Moraca frequented an area in Elgin, Illinois. The officers drove into the designated area of Elgin and located a blue van with the specified license plates. A license plate check revealed that the van was registered to a lawn care business. The officers departed the area and returned in 20 minutes, observing the van being driven away by a white male. The police officers observed nothing unusual or suspicious about the manner in which the van was driven. The officers stopped the van. The van driver got out of the van and walked back towards

the police vehicle, at which time he was ordered to move against the side of the van to be frisked. *Moraca*, 124 Ill.App.3d at 563, 79 Ill.Dec. at 715, 464 N.E.2d at 313. A machine gun was found in the van. *Moraca*, 124 Ill.App.3d at 563, 79 Ill.Dec. at 716, 464 N.E.2d at 314. The police officers asked for identification and ascertained that the van's driver was in fact Giulio Moraca. Cannabis was found on his person. *Moraca*, 124 Ill.App.3d at 563, 79 Ill.Dec. at 716, 464 N.E.2d at 314.

The court in Moraca *found* that although the standard in a *Terry* stop was less than that required for a probable cause determination, the anonymous telephone call failed to establish that the informant was honest or reliable or that there was any basis for the informant's knowledge of Giulio Moraca's illegal activities. *Moraca*, 124 Ill.App.3d at 566-67, 79 Ill.Dec. at 718, 464 N.E.2d at 316. The court concluded that corroboration of the presence of a blue van in Elgin with the specified license plates was insufficient to justify a *Terry* stop, and the court held that the stop violated Giulio Moraca's constitutional rights. *Moraca*, 124 Ill. App.3d at 567, 79 Ill.Dec. at 718, 464 N.E.2d at 316.

In this case, the parties do not dispute the fact that the officers conducted a *Terry* stop at the Amtrak station. While the officers testified that Yarber was always free to go, the officers acknowledged that Yarber was not free to take his bags. Five officers stayed near Yarber while efforts were made to secure a narcotics detection canine unit. The officers requested Yarber's identification and conducted a limited search of his person. The shortest estimate of the length of this detention was 15 minutes.

The officers freely admitted that the only basis for the stop was the anonymous tip, and they further admitted that Yarber engaged in no suspicious or unusual activity from

the time he exited the Amtrak train until the moment of the initial police contact. Therefore, at issue is whether the anonymous tip and factual corroboration provided the officers with a reasonable and articulable suspicion to stop Yarber as he exited the train.

The anonymous tip received on the Crimestoppers line provided general details about Yarber's appearance and residential and employment status. The tip also included details of alleged criminal activity and further predicted a future criminal activity. However, nothing about the tip established the informant's basis of knowledge. The anonymous informant did not indicate that she witnessed any criminal activity. The tip contained only hearsay reports of other individuals. As the informant was anonymous and had previously provided no correct information to the Carbondale police department, there is no way to determine the reliability of the informant. The prediction of future activity lends some degree of credibility to the tip. *White*, 496 U.S. at 332, 110 S.Ct. at 2417, 110 L.Ed.2d at 310. Standing alone, the anonymous tip, without corroboration, was clearly insufficient to justify a *Terry* stop.

The Carbondale police officers corroborated numerous innocent details of Samuel Yarber's life. The officers confirmed his general height, weight, race, employment, and residential address. The officers were unable to independently verify any of the informant's allegations of criminal activity. The officers were unable to corroborate that Yarber left Carbondale on November 8, 1994. The "witness" at the Amtrak station stated that he was "almost positive" that Yarber was in the station earlier that date. Being almost positive falls far short of a positive identification. Even so, this witness did not place Yarber on the Amtrak train. The officers were unable to find one person who could establish that Yarber was, in fact, on board the November 8, 1994,

Amtrak train bound for Chicago. The officers were similarly unable to determine that Yarber was on the November 9, 1994, Amtrak train from Chicago to Carbondale.

At the time the officers approached Yarber at the train station, they had only verified the static details of his life, similar to *Moraca*. A reasonable and articulable suspicion requires more than corroboration of innocent details. Without verification of any other portion of the informant's tip, for all the police knew, Samuel Yarber was the victim of a malicious prank. The failure to corroborate anything other than innocent minutia is what distinguishes this case from *White*. The police officers in *White* corroborated the travel route by direct observation. The quality, and not the quantity, of corroboration is significant in determining that the officers have a reasonable and articulable suspicion to stop a person suspected of criminal activity.

When the reliability of the information obtained from an anonymous informant cannot be easily corroborated, and there are no other suspicious circumstances known to the officer, depending upon the totality of the circumstances, a stop may not be warranted. *People* v. *Scott*, 249 Ill.App.3d 597, 602, 189 Ill.Dec. 108, 113, 619 N.E.2d 809, 814 (1993).

We find that there were no reasonable grounds upon which the Carbondale police officers could stop Yarber at the Amtrak station. Any evidence obtained as a result of Yarber's unconstitutional detention was properly suppressed.

Furthermore, even if the stop was valid, we find that the seizure of Yarber's two bags violated his constitutional rights. The principles of *Terry* permit a brief investigative seizure of luggage if the officers have a reasonable, articulable suspicion that the luggage contains contraband or other evidence of criminal activity. *United States* v. *Place*,

462 U.S. 696, 706, 103 S.Ct. 2637, 2644, 77 L.Ed.2d 110, 120 (1983). Employing the same totality of the circumstances analysis to the seizure of Yarber's luggage, it is clear that the anonymous tip factual corroboration was insufficient to raise a reasonable suspicion that the luggage contained cannabis.

Furthermore, *Place* calls for an intrusion limited in time, emphasizing the importance of the "brevity of the invasion of the individual's Fourth Amendment interests." *Place*, 462 U.S. at 709, 103 S.Ct. at 2645, 77 L.Ed.2d at 122. If the length of the detention is not brief under the circumstances, and if probable cause does not exist, the seizure is not reasonable. *Place*, 462 U.S. at 709, 103 S.Ct. at 2645, 77 L.Ed.2d at 122. Because the law enforcement officials knew that Mr. Place was scheduled to arrive at La Guardia at a specific time, the Supreme Court held that the officials had ample time to arrange for additional investigative measures necessary to establish probable cause and minimize the intrusion. *Place*, 462 U.S. at 709, 103 S.Ct. at 2646, 77 L.Ed. 2d at 122. Under those circumstances, a 90-minute seizure was deemed unreasonable. *Place*, 462 U.S. at 710, 103 S.Ct. at 2646, 77 L.Ed.2d at 122-23.

As in *Place*, the Carbondale police officers believed that Yarber was on a specific train. The officers knew when that train was scheduled to arrive. The officers knew for at least four hours prior to the train's arrival that Jasper was unavailable to work in public places, yet the officers made no alternative arrangements. Upon Yarber's refusal to consent to the search of his bags, and without probable cause to arrest or to obtain a search warrant, the officers seized Yarber's bags. Under the circumstances in existence at the time of the seizure, and given the length of time from the seizure to Jasper's alert, the seizure was also unreasonable in duration.

As we find that the initial stop and the subsequent luggage seizure were invalid, the trial court's suppression order was not against the manifest weight of the evidence.

The order of the circuit court of Jackson County is affirmed.

Affirmed.

MAAG and WELCH, JJ., concur.

FN1. Jasper's drug detection powers and method of alert were not the subject of serious challenge. Nor was any complaint registered concerning police interpretation of Jasper's alert behavior. Since Jasper's actions and the interpretation of those actions formed the basis for probable cause to issue search warrants for both of Yarber's bags and only one bag actually contained contraband, it is worthy to note the rather unique circumstances that accompany canine Jasper and his work.

Authorities explained at the suppression hearing that Jasper is a "nonaggressive" narcotics detection dog. When detecting the presence of illegal drugs, Jasper displays his scent of the contraband by "simply sitting down." When the first of Yarber's two bags were brought to a standing Jasper, he sniffed and he sat down. Thereafter, Jasper assumed a four-point stance to ready himself for a whiff of Yarber's second bag. The second bag was produced and, again, Jasper sat down. The officers who witnessed Jasper's performance, trained in his nonaggressive detection alert tactics, concluded that he alerted on both bags and secured warrants on that conclusion. Apparently, with regard to one of the bags, Jasper did not mean to convey a drug alert and was "simply sitting down."

APPENDIX B

[*Letterhead of*]
Illinois Supreme Court
Juleann Hornyak, Clerk

October 2, 1996

State's Attorneys App. Pros. Springfield
Fourth Judicial District
725 South Second Street
Springfield, IL 62704

No. 81064 – People State of Illinois, petitioner v. Samuel Yarber, respondent. Leave to appeal, Appellate Court, Fifth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 24, 1996.

APPENDIX C

[*Letterhead of*]
Illinois Supreme Court
Juleann Hornyak, Clerk

November 6, 1996

Mr. Charles F. Mansfield
State's Attorneys Appellate Prosecutor
725 South Second Street
Springfield, Illinois 62704

In re: People State of Illinois, petitioner v. Samuel Yarber, respondent. No. 81064.

Dear Mr. Mansfield:

The following order was entered on this date in the above captioned case:

> The motion by petitioner for leave to file a motion to reconsider the order denying the petition for leave to appeal is *denied*.

Very truly yours,

Juleann Hornyak
Clerk of the Supreme Court

JH:jmb

cc: AC CrRyan
SA/Jackson County
SAD/Mt. Vernon

APPENDIX D

[Entered February 22, 1995]

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
FIRST JUDICIAL DISTRICT
JACKSON COUNTY

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
vs.	)	No. 94-CF-542
	)	
SAMUEL J. YARBER,	)	
	)	
Defendant.	)	

ORDER

This Court has previously made a finding of facts which is contained in the transcript of the hearing completed on February 6, 1995. Memoranda of law have been furnished by counsel for the People and counsel for the defendant. The Court has also conducted its own research. For a passing appreciation of the problems caused for a trial court in cases of this nature, reference is made to *People v. Stoddard*, 256 Ill. App. 3d 989.

This Court has found that the initial stop of the defendant was permissible because of detailed corroboration of many facts contained in two separate telephone calls by an anonymous (and unknown) caller. It is important to note that no face to face contact between the caller and the police was ever made. Once defendant had been stopped, detained, patted down (consensually), the only (and most important) question left to be resolved was whether the detention of defendant's luggage for a canine sniff test was permissible.

Other than corroborating the trip to Chicago, the officers were unable to corroborate any facts connected to defendant's alleged drug activity. Therefore, whether the officers possessed sufficient, specific articulable facts to detain the gym bag and garbage bag in the possession of the defendant would have to be established during the brief period of detention. The critical question in this case is: "Did the information developed by the officers after this permissible stop give them reason to believe (reasonable suspicion) that the luggage possessed by defendant contained drugs?" If the answer is "yes", then a brief detention for a canine sniff test is permissible. If the answer is "no", then the detention of the luggage was in violation of defendant's constitutional rights.

Based upon all the evidence in this case and the law considered by the Court (which is listed below), this Court believes the answer to the question is, "no". Many cases discuss factors discovered after the encounter which support the detention of luggage: nervousness of the individual, conflicting answers to questions posed by the officers, reluctance to cooperate, body language of the defendant and producing improper or conflicting identification. None of these are present in this case. No facts were developed during the brief detention of defendant which served to provide the specific articulable facts necessary to detain defendant's luggage.

It should be added, although not necessarily for this opinion, that this Court finds no fault with the procedure employed by the officers after the baggage was detained and that procedure was not considered by the Court in its order.

The decision of this Court is based upon its attempt to analyze and reconcile (if at all possible) the following cases:

A) *United States v. Place*, 462, U.S. 696.

B) *People v. Forrest*, 172 Ill. App. 3d 385.

C) *People v. Messamore*, 245 Ill. App. 3d 627.

D) *People v. Moraca*, 124 Ill. App. 3d 561.

E) *People v. Breeding*, 219 Ill. App. 3d 590.

F) *People v. Furlong*, 217 Ill. App.3d 1047.

G) *People v. Pantoia*, 194 Ill. App.3d 671.

H) *People v. Menendez*, 199 Ill. App. 3d 612.

WHEREFORE, it is the **ORDER** of this Court that defendant's Motion to Suppress Evidence is GRANTED and all evidence seized on November 9, 1994 is suppressed from further use in the trial of this cause.

Enter this 22nd day of February, 1995.

/s/ DAVID W. WATT, JR.
Presiding Judge

DWW/ls